IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

CWP No.1126/2005

Reserved on.31.7.2007

Decided on. August 6, 2007

State of H.P. & others. **…Petitioner.**

Versus

Daginder Singh & another. **…Respondents**

Coram

The Hon'ble Mr. Rajiv Sharma, J.

Whether approved for reporting ?[1]*. yes*

For the petitioners : Mr. M.S. Chandel, Advocate General with Ms. Meenakshi Sharma, Deputy Advocate General.

For the respondent: Mr. Vinod Thakur, Advocate for the respondent No.1

Rajiv Sharma, J.

A challenge has been laid to the award dated 21.7.2005 passed by the H.P. Labour Court-cum-Industrial Tribunal, Dharamshala camp at Mandi in reference No. 12/2004.

The brief facts necessary for the adjudication of this petition are that the State Government had made the following reference to the H.P. Labour Court-cum-Industrial Tribunal, Dharamshala camp at Mandi:

> **"Whether the termination of services of Shri Daginder Singh son of Sh. Madan Singh, daily wages Beldar by the Executive Engineer, IPH Division Sundernagar, District Mandi, H.P. w.e.f. 16.11.2000 without complying the provisions of the Industrial Disputes Act, 1947, is proper and justified? If not, what relief of service benefits and amount of compensation the above aggrieved workman is entitled for?**

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[1] ***Whether the reporters of Local Papers may be allowed to see the judgment***? yes

In sequel to the reference made by the State Government, the respondent (hereinafter referred to as the 'workman' for convenience sake) had filed statement of claim before the Labour Court. The workman had primarily contended before the Labour Court that he had been retrenched without following the mandatory provisions of the Industrial Disputes Act, 1947 (hereafter referred to as the 'Act'). The employer had resisted the claim filed by the workman. The Labour Court on the basis of the oral as well as documentary evidence led by the parties had answered the reference in affirmative. The Labour Court had directed the re-instatement of the workman and had also granted him consequential benefits of seniority and back wages to the extent of 50%.

The learned Advocate General had strenuously argued that the findings are erroneous and liable to be interfered by the Court. He had also contended that the alleged retrenchment is dated 16.11.2000 but the reference has been made by the State Government in the year 2004.

Mr. Vinod Thakur, Advocate had supported the award dated 21.7.2005 passed by the Labour Court.

I have heard the learned counsel for the parties and perused the record.

Mr. Vinod Thakur had drawn the attention of the Court to the man-days chart filed with the writ petition. It is evident from the close scrutiny of the man-days chart that the workman had in fact completed 239 ½ days in 12 calendar months preceding his retrenchment i.e. 16.11.2000. The completion of 239 ½ days will amount to sufficient compliance of section 25-B of the Industrial Disputes Act, 1947. Accordingly it was not necessary for the Labour Court to go into the gamut whether the artificial breaks could be given to the workman or not during his engagement.

Mr. Rakesh Rana, RW-1, appearing on behalf of the employer had admitted in his cross-examination that the workman junior to the respondent-workman had been retained while retrenching him. It has also come in the evidence that one Sh. Tek Singh, who was junior to the respondent-workman, had been retained while retrenching him on 16.11.2000. Consequently the workman is entitled to get the benefit of section 25-G of the Industrial Disputes Act, 1947. The Labour Court should always take into consideration while calculating whether the workman had completed 240 days in 12 calendar months preceding his retrenching and not whole year.

The Apex Court in ***S.K. Verma v. Industrial Tribunal-cum-Labour Court, New Delhi,*** *AIR 1981 SC 422* has held how the 240 days have to be calculated under section 25-B of the Industrial Disputes Act, 1947. Their Lordships have held as under:

> **"Act 36 of 1964 has drastically changed the position. S.2 (eee) has been repealed and S. 25-B (2) now begins with the clause "where a workman is not in continuous service……for a period of one year." These changes brought about by Act 36 of 1964 appear to be clearly designed to provide that a workman who has actually worked under the employer for not less than 240 days during a period of twelve months shall be deemed to have been in continuous service for a period of one year whether or not he has in fact been in such continuous service for a period of one year. It is enough that he has worked for 240 days in a period of 12 months; it is not necessary that he should have been in the service of the employer for one whole year. So we hold that Usha Kumar and Madhu Bala are in the same position as the other appellants."**

The workman was retrenched on 16.11.2000 and he approached the Labour Officer-cum-Conciliation Officer on 1.4.2002. The Labour Officer-cum-Conciliation Officer made the failure report to the State

Government on 17.3.2003 and the dispute was referred to the Labour Court by the State Government on 2.1.2004. In view of these facts there was no inordinate delay in approaching the Labour Court by the workman. Thus, the submission of the Learned Advocate General that there was inordinate delay in approaching the Labour Court is untenable.

Accordingly it is held that the workman had completed 240 days in 12 calendar months preceding his retrenchment on 16.11.2004. The workman could not be terminated without following the mandatory provisions of section 25-G of the Industrial Disputes Act, 1947 since the workman junior to him had been retained at the time of effecting his retrenchment. He is also held entitled to the protection of section 25-G of the Industrial Disputes Act.

Accordingly the writ petition is disposed of by modifying the award dated 21.7.2005 In the result, the petition is dismissed. The workman is held entitled to re-instatement with 50% back wages and consequential seniority. The workman is also held entitled to costs which are quantified at Rs. 1000/-.

(Rajiv Sharma), Judge

August 6, 2007
Awasthi